

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JUSTIN PILLOW and CIARA
PILLOW, husband and wife,

Plaintiffs,

v.

CNH INDUSTRIAL AMERICA, LLC,
a Wisconsin corporation,

Defendant.

Case No. 2:20-CV-0144-TOR

STIPULATED PROTECTIVE
ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information

STIPULATED PROTECTIVE ORDER ~ 1

1 under seal.

2 2. “CONFIDENTIAL” MATERIAL

3 “Confidential” material shall include the following documents and
4 tangible things produced or otherwise exchanged: Documents containing
5 proprietary information, design drawings, schematics, testing, research and
6 development materials, and records related to product testing or design
7 development.

8 3. SCOPE

9 The protections conferred by this agreement cover not only confidential
10 material (as defined above), but also (1) any information copied or extracted
11 from confidential material; (2) all copies, excerpts, summaries, or compilations
12 of confidential material; and (3) any testimony, conversations, or presentations
13 by parties or their counsel that might reveal confidential material.

14 However, the protections conferred by this agreement do not cover
15 information that is in the public domain or becomes part of the public domain
16 through trial or otherwise.

17 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

18 4.1 Basic Principles. A receiving party may use confidential material
19 that is disclosed or produced by another party or by a non-party in connection
20 with this case only for prosecuting, defending, or attempting to settle this
21 litigation. Confidential material may be disclosed only to the categories of
22 persons and under the conditions described in this agreement. Confidential
23 material must be stored and maintained by a receiving party at a location and in
24 a secure manner that ensures that access is limited to the persons authorized
25 under this agreement.

1 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
2 otherwise ordered by the court or permitted in writing by the designating party,
3 a receiving party may disclose any confidential material only to:

4 (a) the receiving party’s counsel of record in this action, as well
5 as employees of counsel to whom it is reasonably necessary to disclose the
6 information for this litigation;

7 (b) the officers, directors, and employees (including in house
8 counsel) of the receiving party to whom disclosure is reasonably necessary for
9 this litigation, unless the parties agree that a particular document or material
10 produced is for Attorney’s Eyes Only and is so designated;

11 (c) experts and consultants to whom disclosure is reasonably
12 necessary for this litigation and who have signed the “Acknowledgment and
13 Agreement to Be Bound” (Exhibit A);

14 (d) the court, court personnel, and court reporters and their staff;

15 (e) copy or imaging services retained by counsel to assist in the
16 duplication of confidential material, provided that counsel for the party
17 retaining the copy or imaging service instructs the service not to disclose any
18 confidential material to third parties and to immediately return all originals and
19 copies of any confidential material;

20 (f) during their depositions, witnesses in the action to whom
21 disclosure is reasonably necessary and who have signed the “Acknowledgment
22 and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the
23 designating party or ordered by the court. Pages of transcribed deposition
24 testimony or exhibits to depositions that reveal confidential material must be
25 separately bound by the court reporter and may not be disclosed to anyone
26 except as permitted under this agreement;

STIPULATED PROTECTIVE ORDER ~ 3

1 (g) the author or recipient of a document containing the
2 information or a custodian or other person who otherwise possessed or knew
3 the information.

4 4.3 Filing Confidential Material. Before filing confidential material or
5 discussing or referencing such material in court filings, the filing party shall
6 confer with the designating party, in accordance with Fed. R. Civ. P. 37(a)(1),
7 to determine whether the designating party will remove the confidential
8 designation, whether the document can be redacted, or whether a motion to seal
9 or stipulation and proposed order is warranted. During the meet and confer
10 process, the designating party must identify the basis for sealing the specific
11 confidential information at issue, and the filing party shall include this basis in
12 its motion to seal, along with any objection to sealing the information at issue.
13 Fed. R. Civ. P. 5.2 sets forth the procedures that must be followed and the
14 standards that will be applied when a party seeks permission from the court to
15 file material under seal. A party who seeks to maintain the confidentiality of its
16 information must satisfy the requirements of Fed. R. Civ. P. 5.2, even if it is not
17 the party filing the motion to seal. Failure to satisfy this requirement will result
18 in the motion to seal being denied, in accordance with the strong presumption
19 of public access to the Court's files.

20 5. DESIGNATING PROTECTED MATERIAL

21 5.1 Exercise of Restraint and Care in Designating Material for
22 Protection. Each party or non-party that designates information or items for
23 protection under this agreement must take care to limit any such designation to
24 specific material that qualifies under the appropriate standards. The designating
25 party must designate for protection only those parts of material, documents,
26 items, or oral or written communications that qualify, so that other portions of
STIPULATED PROTECTIVE ORDER ~ 4

1 the material, documents, items, or communications for which protection is not
2 warranted are not swept unjustifiably within the ambit of this agreement.

3 Mass, indiscriminate, or routinized designations are prohibited.

4 Designations that are shown to be clearly unjustified or that have been made for
5 an improper purpose (e.g., to unnecessarily encumber or delay the case
6 development process or to impose unnecessary expenses and burdens on other
7 parties) expose the designating party to sanctions.

8 If it comes to a designating party's attention that information or items
9 that it designated for protection do not qualify for protection, the designating
10 party must promptly notify all other parties that it is withdrawing the mistaken
11 designation.

12 5.2 Manner and Timing of Designations. Except as otherwise provided
13 in this agreement (see, e.g., second paragraph of section 5.2(a) below), or as
14 otherwise stipulated or ordered, disclosure or discovery material that qualifies
15 for protection under this agreement must be clearly so designated before or
16 when the material is disclosed or produced.

17 (a) Information in documentary form: (e.g., paper or electronic
18 documents and deposition exhibits, but excluding transcripts of depositions or
19 other pretrial or trial proceedings), the designating party must affix the word
20 "CONFIDENTIAL" to each page that contains confidential material. If only a
21 portion or portions of the material on a page qualifies for protection, the
22 producing party also must clearly identify the protected portion(s) (e.g., by
23 making appropriate markings in the margins).

24 (b) Testimony given in deposition or in other pretrial proceedings: the
25 parties and any participating non-parties must identify on the record, during the
26 deposition or other pretrial proceeding, all protected testimony, without

1 prejudice to their right to so designate other testimony after reviewing the
2 transcript. Any party or non-party may, within fifteen days after receiving the
3 transcript of the deposition or other pretrial proceeding, designate portions of
4 the transcript, or exhibits thereto, as confidential. If a party or non-party desires
5 to protect confidential information at trial, the issue should be addressed during
6 the pre-trial conference.

7 (c) Other tangible items: the producing party must affix in a prominent
8 place on the exterior of the container or containers in which the information or
9 item is stored the word "CONFIDENTIAL." If only a portion or portions of the
10 information or item warrant protection, the producing party, to the extent
11 practicable, shall identify the protected portion(s).

12 5.3 Inadvertent Failures to Designate. If timely corrected, an
13 inadvertent failure to designate qualified information or items does not,
14 standing alone, waive the designating party's right to secure protection under
15 this agreement for such material. Upon timely correction of a designation, the
16 receiving party must make reasonable efforts to ensure that the material is
17 treated in accordance with the provisions of this agreement.

18 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

19 6.1 Timing of Challenges. Any party or non-party may challenge a
20 designation of confidentiality at any time. Unless a prompt challenge to a
21 designating party's confidentiality designation is necessary to avoid
22 foreseeable, substantial unfairness, unnecessary economic burdens, or a
23 significant disruption or delay of the litigation, a party does not waive its right
24 to challenge a confidentiality designation by electing not to mount a challenge
25 promptly after the original designation is disclosed.

1 6.2 Meet and Confer. The parties must make every attempt to resolve
 2 any dispute regarding confidential designations without court involvement. Any
 3 motion regarding confidential designations or for a protective order must
 4 include a certification, in the motion or in a declaration or affidavit, that the
 5 movant has engaged in a good faith meet and confer conference with other
 6 affected parties in an effort to resolve the dispute without court action. The
 7 certification must list the date, manner, and participants to the conference. A
 8 good faith effort to confer requires a face-to-face meeting or a telephone
 9 conference.

10 6.3 Judicial Intervention. If the parties cannot resolve a challenge
 11 without court intervention, the designating party may file and serve a motion to
 12 retain confidentiality. The burden of persuasion in any such motion shall be on
 13 the designating party. Frivolous challenges, and those made for an improper
 14 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
 15 parties) may expose the challenging party to sanctions. All parties shall
 16 continue to maintain the material in question as confidential until the court rules
 17 on the challenge.

18 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED
 19 PRODUCED IN OTHER LITIGATION

20 If a party is served with a subpoena or a court order issued in other
 21 litigation that compels disclosure of any information or items designated in this
 22 action as “CONFIDENTIAL,” that party must:

23 (a) promptly notify the designating party in writing and include
 24 a copy of the subpoena or court order;

25 (b) promptly notify in writing the party who caused the
 26 subpoena or order to issue in the other litigation that some or all of the material
 STIPULATED PROTECTIVE ORDER ~ 7

1 covered by the subpoena or order is subject to this agreement. Such notification
2 shall include a copy of this agreement; and

3 (c) cooperate with respect to all reasonable procedures sought
4 to be pursued by the designating party whose confidential material may be
5 affected.

6 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

7 If a receiving party learns that, by inadvertence or otherwise, it has
8 disclosed confidential material to any person or in any circumstance not
9 authorized under this agreement, the receiving party must immediately (a)
10 notify in writing the designating party of the unauthorized disclosures, (b) use
11 its best efforts to retrieve all unauthorized copies of the protected material, (c)
12 inform the person or persons to whom unauthorized disclosures were made of
13 all the terms of this agreement, and (d) request that such person or persons
14 execute the “Acknowledgment and Agreement to Be Bound” that is attached
15 hereto as Exhibit A.

16 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
17 PROTECTED MATERIAL

18 When a producing party gives notice to receiving parties that certain
19 inadvertently produced material is subject to a claim of privilege or other
20 protection, the obligations of the receiving parties are those set forth in Fed. R.
21 Civ. P. 26(b)(5)(B). This provision is not intended to modify whatever
22 procedure may be established in an e-discovery order or agreement that
23 provides for production without prior privilege review. The parties agree to the
24 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

1 10. NON TERMINATION AND RETURN OF DOCUMENTS

2 Within 60 days after the termination of this action, including all appeals,
3 each receiving party must return all confidential material to the producing
4 party, including all copies, extracts and summaries thereof. Alternatively, the
5 parties may agree upon appropriate methods of destruction.

6 Notwithstanding this provision, counsel are entitled to retain one archival
7 copy of all documents filed with the court, trial, deposition, and hearing
8 transcripts, correspondence, deposition and trial exhibits, expert reports,
9 attorney work product, and consultant and expert work product, even if such
10 materials contain confidential material.

11 The confidentiality obligations imposed by this agreement shall remain in
12 effect until a designating party agrees otherwise in writing or a court orders
13 otherwise.

14 11. SECURITY PRECAUTIONS AND DATA BREACHES

15 Each part must make reasonable efforts to protect confidentiality of any
16 confidential document disclosed or produced to that party. A part who learns of
17 a breach of confidentiality must promptly notify the disclosing or producing
18 party of the scope and nature of that breach and make reasonable efforts to
19 remedy the breach.

20 12. SERVING THIS PROTECTIVE ORDER ON A NON-PARTY

21 A party serving a subpoena on a non-party must simultaneously serve a
22 copy of this protective order.

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 PURSUANT TO STIPULATION, IT IS SO ORDERED.

3 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the
4 production of any documents in this proceeding shall not, for the purposes of
5 this proceeding or any other federal or state proceeding, constitute a waiver by
6 the producing party of any privilege applicable to those documents, including
7 the attorney-client privilege, attorney work-product protection, or any other
8 privilege or protection recognized by law.

9 Dated January, 2022.



Thomas O. Rice
THOMAS O. RICE
United States District Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name],
of _____ [print or type full address],
declare under penalty of perjury that I have read in its entirety and understand the
Stipulated Protective Order that was issued by the United States District Court
for the Eastern District of Washington on [date] in the case of *Justin Pillow and*
Ciara Pillow v. CNH Industrial America LLC, Case No. 2:20-cv-0144-TOR. I
agree to comply with and to be bound by all the terms of this Stipulated Protective
Order and I understand and acknowledge that failure to so comply could expose
me to sanctions and punishment in the nature of contempt. I solemnly promise
that I will not disclose in any manner any information or item that is subject to
this Stipulated Protective Order to any person or entity except in strict
compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District
Court for the Eastern District of Washington for the purpose of enforcing the
terms of this Stipulated Protective Order, even if such enforcement proceedings
occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____